

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00357/2018

Wednesday, this the 14th day of July 2021

C O R A M :

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

P.Chellappa Gounden,
Aged 95 years,
S/o.Pongianna Gounden,
(Retired Shunting Jamedar,
Southern Railway/Erode).
Residing at No.79, Gandhiji Road,
Kasipalayam, Erode – 638 009. ...Applicant

(By Advocate Mr.T.C.Govindaswamy)

versus

1. Union of India
represented by the General Manager,
Southern Railway, Head Quarters Office,
Park Town P.O., Chennai-600 003.
2. The Chief Personnel Officer,
Southern Railway, Head Quarters Office,
Park Town P.O., Chennai-600 003.
3. The Sr. Divisional Finance Manager,
Southern Railway, Palakkad Division,
Palakkad-678 002.
4. Senior Divisional Personnel Officer,
Southern Railway, Palakkad Division,
Palakkad-678 002.

...Respondents

(By Advocate Mr.Sunil Jacob Jose)

This application having been heard on 29th June 2021, the Tribunal on 14th July 2021 delivered the following :

ORDER

Per : Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER

The applicant in this OA is at present over 99 years old, his date of birth being 15.04.1922. He is a retired Shunting Jamedar of Southern Railway, Palakkad Division and submits that there has been an erroneous fixation of his pension for the period from 01.01.2006 and also from 01.01.2016 and the consequential recurring loss, month after month.

2. The relief sought by him is to call for the records leading to the issue of Annexure A-13 letter of the Southern Railway dated 06.07.2017 and to quash the same. He also seeks a direction that he is entitled to be granted a minimum pension of Rs.4920/- plus allowances with effect from 01.01.2006 and a minimum pension of Rs.12750/- plus allowances with effect from 01.01.2016 by the respondents. He has also asked for direction to the respondents to pay interest at 9% per annum on the arrears of pension and allowances to be calculated with effect from such date as this Tribunal may find just and proper along with cost incidental to the application.

3. The undisputed facts of the case are that the applicant retired as a Shunting Jamedar of Southern Railway, Palakkad Division on 08.08.1978 with 30.5 years of qualifying service. At that time he was in the scale of Rs.225-350 and had voluntarily retired from service. At the time of retirement, he was drawing a pay of Rs.290/- in the scale of Rs.225-350/-. Accordingly his basic pension at the time of retirement was fixed at Rs.151/-. For the implementation of the recommendations of the 5th Central

Pay Commission (5th CPC), he submits that the Government of India, Ministry of Railways, issued an order R.B.E No. 55/98 dated 10.03.1998 indicating the methodology of fixation of pension of pre - 01.01.1986 pensioners which has been produced at Annexure A-1. After para 3 of the said Railway Board order, the method of fixation of pension of a pre - 01.01.1986 pensioners has been indicated, referring Department of Pension and Pensioners Welfare, Government of India, OM:F.No.45/86/97-PS/PW(A)-Part III dated 10.02.1998 as follows :

"2. In accordance with the provisions contained in CCS (Pension) Rules 1972 and the Government's orders issued thereunder, at present of all pre-1986 pensioners is based on the average emoluments drawn by them during last completed 10 months immediately preceding the date of retirement and similarly family pension is based on the last pay drawn by the deceased Government servant/pensioner. Government has, inter-alia accepted the recommendation of Fifth Central Pay Commission to the effect that the pension of all the pre-1986 retirees may be updated by notional fixation of their pay as on 1.1.1986 by adopting the same formula as for the serving employees and thereafter for the purpose of consolidation of their pension/family pension as on 1.1.1986, they may be treated alike those who have retired on or after 1.1.1986. Accordingly, pay of all those government servants who retired prior to 1.1.1986 and were in receipt of pension as on 1.1.1986 and also in cases of those Central Government employees who died prior to 1.1.1986, in respect of whom family pension was being paid on 1.1.1986, will be fixed on notional basis in the revised scale of pay for the post held by the pensioner at the time of retirement or on the date of death of Government employee, introduced subsequent to retirement/death of Government employee consequent upon promulgation of Revised Pay Rules on implementation of recommendations of successive Pay Commissions or of award of Board of Arbitration of judgment of Court or due to general revision of the scale of pay for the post etc. The number of occasions on which pay shall be required to be fixed on notional basis in each individual case would vary and may be required to be revised on several occasions in respect of those employees who retired in the 'fifties and sixties'. In all such cases pay fixed on notional basis on the

first occasion shall be treated as 'pay' for the purpose of emoluments for re-fixation of pay in the revised scale of pay on the second occasion and other elements like DA/Adhoc DA/Additional DA, IR etc. based on this notional pay shall be taken into account. In the same manner pay on notional basis shall be fixed on subsequent occasions. The last occasion shall be fixation of pay in the scale introduced on the basis of Fourth Central Pay Commission and made effective from 1.1.1986. While fixation of pay on notional basis on each occasion, the pay fixation formulae approved by the Government and other relevant instructions on the subject in force at the relevant time shall be strictly followed. However, the benefit of any notional increments admissible in terms of the rules and instructions applicable at the relevant time shall not be extended in any case of refixation of pay on notional basis. The notional pay so arrived as on 1.1.1986 shall be treated as average emoluments for the purpose of calculation of pension and accordingly the pension shall be calculated as on 1.1.1986 as per the pension formula then prescribed. The pension so worked out shall be consolidated as on 1.1.1996 in accordance with the provisions contained in paragraph 4.1 of this Department's Office Memorandum No.45/86/97-P&PW(A) Part II dated the 27th October 1997 and shall be treated as basic pension for the purpose of grant of Dearness Relief in future."

4. In light of the above formula, the applicant submits that his pay as on 01.01.1986 was arrived at Rs.1200/- in the scale of pay of Rs.1200-1800/- and his pension for a qualifying service of 30.5 years was arrived at Rs.555/-. The replacement scale of pay under the 5th CPC recommendations for the scale of pay of Rs.1200-1800/- was Rs.4000-6000/- and considering the fact that the minimum pension shall not be less than 50% of the minimum of the scale of pay of the post, the applicants' pension, with effect from 01.01.1996 was fixed at Rs.1849/-. Later, during the 6th CPC, the applicants' pension was revised with effect from 01.01.2006 by fixing the same at the stage of Rs.3500/- as per a PPO No.8605302481 dated 03.07.2012, a copy of which is produced at Annexure A-2. Since this was

less than the pension of Rs.4180/- already fixed and being drawn by the applicant with effect from 01.01.2009, the respondents then issued a letter of authority to the pension disbursing bank on his representation, correcting the pension of Rs.3500/- already fixed to Rs.4180/-, with effect from 1.1.2006 as produced at Annexure A-4. Subsequently, Railway Board issued another order indication method of fixation of pay as per various judicial pronouncement and, thus, in terms of Annexures A-5 and A-6, for a qualifying service of 30.5 years, the applicant submits that his pension with effect from 01.01.2006 should have been again revised to Rs.4548/-. As this was not done, he made various representations on the subject without any response. Meanwhile, the Railway Board issued yet another order relating to refixation of pension of pre-01.01.2006 retirees, delinking the requirement of the qualifying service of 33 years, for grant of full pension. A copy of the Railway Board Order bearing RBE No.35/2016 dated 13.04.2016 has been produced at Annexure A-9. The applicant submitted that in terms of Annexure A-9, he should, therefore, have been given the minimum pension of Rs.4920/- with effect from 01.01.2006, in place of the Rs.4180/- which was issued in the letter of authority. However, this benefit was also not granted to the applicant and he again submitted a series of representations.

5. After this another order was issued by the Department of Pension and Pensioners Welfare vide OM No.38/37/2016-P&PW(A) dated 12.05.2017, a copy of which is produced in Annexure A-12. This was regarding revision of Pension of pre-2016 Pensioners/Family Pensioners. According to this

order, for the purpose of calculation of notional pay with effect from 01.01.2016 of those government servants who died or retired before 01.01.1986, the pay scale and the notional pay as on 01.01.1986, as arrived at in terms of the instructions issued by the department's O.M. 45/86/97/P&PW(A) dated 10.02.1998, (RB order produced as Annexure A-1) will be treated as the pay scale and the pay of the Government of the concerned Government Servant as on 01.01.1986. In terms of Annexure A-12, 50% of the notional pay as on 01.01.2016 arrived at would be the revised pension and 30% of this notional pay would be the revised family pension w.e.f. 01.01.2016. Going by this formula, the applicant submits that his revised scale of pay as on 01.01.1986 was treated as Rs.1200-1800/- and thus the pay fixed notionally was Rs.1200/-. On that basis, the pay as on 01.01.1996, was treated as Rs.4000/- in the scale of Rs.4000-6000/-. Thereafter, going by the Railway Board Circular produced as Annexures A-5 and A-6, the applicants pay was to be notionally arrived at and he would become due to be granted a minimum pension of Rs.4920/-. This amount, which if multiplied by a factor of 2.57 as alternatively provided for in A-12, would make his minimum pension w.e.f. 01.01.2016, as Rs.12,650/-. Since this amount was less than 50% of the minimum of the pay of the corresponding pay matrix in level 4 (the minimum of the pay in the level 4 of pay matrix in PB 1 + G.P. Rs.2400/- is Rs.25,500/-, and 50% of which is Rs.12,750/-) the applicant submits that he is fully entitled to be granted a minimum pension of Rs.12750/- w.e.f. 01.01.2016.

6. However, he submits that the minimum pension of Rs.4920/- was not approved w.e.f 01.01.2006 as due to him and instead his representation on the subject was rejected by the letter dated 06.07.2017, issued by the 4th Respondent, a copy of which is produced as the impugned order at Annexure A-13. In Annexure A13, the reason stated for rejecting his application reads as follows :

".....As per the existing provision, the pension will be revised based on the replacement scale. In your case the merging of scales for the Shunting Master and the Shunting Jamedar (Rs.4000-6000) came into force wef 01.01.1996. During the said period you were not in service since you retired on 08.08.1978. Hence the scale you requested is not applicable in your case and no revision of pension is warranted."

7. The applicant submits that Annexure A-13 impugned letter is arbitrary, discriminatory, and violative of the constitutional guarantees. He further submits that the point that the posts of Shunting Jamedars and Shunting Masters were merged with effect from 01.01.1996 is an irrelevant one. He submits that prior to 01.01.1986 the scale of pay attached to the post of Shunting Jamedar was Rs.330-480/- and that of Shunting Master was Rs.380-560/-. With effect from 01.01.1986, the scale of pay was revised as Rs.1200-1800/- and as Rs.1320-2040/- respectively. Again, with effect from 01.01.1986 both these scales of pay were recommended to constitute a common replacement scale of pay of Rs.4000-6000/-. He submits that it is by recognising that the replacement scale of pay of Rs.4000-6000/- was entitled to him that his pension with effect from 01.01.1996, was fixed as Rs. 1849/- for a qualifying service of 30.05 years. He submits that the respondents cannot now turn back and say that the merger came into effect

from 01.01.1996, and that therefore, he is not eligible for revision of pension as prayed for. He submits that the date of 01.01.1996 has no relevance, for him, the relevant date being 01.01.1986. Moreover, merger of the posts of Shunting Jamedar and Shunting Master is not relevant in his case. Thus Annexure A-13 is not based on relevant consideration nor based on relevant materials. He submits, therefore, that going by the various orders as outlined above, he is entitled to receive a minimum pension of Rs.4920/- w.e.f 01.01.2006 and a minimum pension of Rs.12750/- w.e.f 01.01.2016.

8. In reply the respondents submit that the OA is not maintainable in the facts, laws or the circumstances of the case. They submit that the Railway Board as per Order No.PCIII/80/UPG/19 dated 29.07.1983 had communicated a decision to restructure certain Group C and D cadres. This order, which has been produced at Annexure R-2 of the respondents' reply, consists of the following with reference to the date of effect at para 2 :

“2. This restructuring of the cadres will be with reference to the sanctioned cadre strength as on 1st August 1983. The staff, who will be placed in the revised grades in terms of these orders, will be eligible to draw pay in higher grade from 01.08.1983 with the benefit of proforma fixation from 01.08.1982. The benefit of proforma fixation will be admissible only to those staff, who is placed in the vacancies arising directly as a result of these restructuring orders. Pay of the staff, who have been promoted in the normal course to higher grades during the period 01.08.1982 to 31.07.1983, will be stepped up under the normal rules, with reference to the pay of their juniors, whose pay is fixed under these orders.”

Further, para 3.1(ii) Group "C" (a) of the same order relating to Shunting Jamedar indicates the following:

"Where all the posts in an existing grade are en-bloc placed in a higher grade, the existing regular incumbents thereof may be allowed the higher grade without subjecting them to any selection, even where the posts are now classified as "Selection" posts..... Similarly having regard to the percentage prescribed for the category of Shunting staff, all the existing posts of Shunting Jamadars in the scale of Rs.225-350/- will be placed in the scale of Rs.330-480/- or above. Hence, all the regular incumbents against these posts presently in the scale of Rs.225-350/- will be allowed the scale of Rs.330-480/- without subjecting them to any selection."

9. The respondents submit that in line with the provisions of Annexure R-2, as quoted above, the restructuring of cadres was to be done with reference to the sanctioned cadre strength as on 01.08.1983 and in case of Shunting Jamedars it was clearly stipulated that '*the regular incumbents*' against these posts presently in the scale of Rs.225-350/- would be allowed the scale of Rs.330-480/-. They submit that in the case of the applicant since he retired from service on 08.08.1978, the restructuring orders at Annexure R-2, which is restricted to those who were in service as on 01.08.1983 granting higher pay scale of Rs.330-480/- to Shunting Jamedars, is not at all applicable to him and he cannot derive any benefit out of them. Thus, the applicant who had retired from service on 08.08.1978 drawing a pay of Rs.290/- in scale Rs.225-350/- was eligible for further benefits regarding future fixation of pension considering this pay scale and not the higher scale of Rs.330-480/-. It is submitted that the corresponding scale of Rs.225-350/- was Rs.950-1400/- (4th CPC), Rs.3050-4590 (5th CPC),

Rs.5200-20,200/- + Grade Pay Rs.1900/- (6th CPC). It is only the employees who were working as Shunting Jamedar as on 01.08.1983 who were eligible for the upgraded scale of Rs.330-480/- and hence only those who are retired after 01.08.1983 were eligible for the benefits of the upgraded scale of Rs.330-480/- and its equivalent scales in successive Pay Commissions. The equivalent pay scales of Rs.330-480/- in the 4th CPC was Rs.1200-1800/-, Rs.4000-6000/- in 5th CPC effective from 01.01.1996 and Rs.5200-20200/- + GP Rs.2400/- in 6th CPC, effective from 01.01.2006.

10. The respondents submit that based on the wrong notion that the applicant was eligible for the pension in the upgraded scale of pay of Rs.1200-1800/-, Rs.4000-6000/- his pension was **erroneously revised to Rs.1849/-** with effect from 01.01.1996 vide letter of authority dated 06.12.2000 and later to Rs.4180/- with effect from 01.01.2006 on the same basis. Actually, as per the respondents, the applicant was only eligible for pension of Rs.1501/- with effect from 01.01.1996 and Rs.3890/- with effect from 01.01.2006 as his pay should have been fixed as per the correct entry in the concordance table in the Annexure to Annexure A-5. In short, the pension of Rs.1849/- granted to him with effect from 01.01.1996 was not in order and was the original mistake in his case. His pension should have been revised duly reckoning the corresponding pay scale of Rs.3050-4590/- and not Rs.4000-Rs.6000 as authorised. Thus his claim for pension of Rs.4920/- with effect from 01.01.2006 is not correct.

11. It is further submitted by the respondents that the **Railway Board** vide letter **No.F(E)III/99/PN1/20** dated **20.08.2001** had issued a **clarification that the pension/family pension shall not be less than 50% of the minimum of the corresponding scale as on 01.01.1996 of the scale of pay held by the pensioner at the time of his retirement/death while in service and not on the higher replacement scale introduced with effect from 01.01.1996.** The Railway Board had also called upon the Railway Administrations to update the pension/family pension of the pre-1996 pensioners with reference to the corresponding scale of pay and not on the higher replacement scales of pay introduced with effect from **01.01.1996.** A copy of Railway Board letter dated 20.08.2001 has been produced at Annexure R-3. It is thus reiterated that the applicant, having retired from service on 08.08.1978 while working as Shunting Jamedar in scale Rs.225-350/-, the Annexure R-2 Railway Board order dated 29.07.1983 restructuring certain Group C and D cadres was not applicable to him as he was not in service on 01.08.1983. It was only through an inadvertent error that the benefits based on the higher pay scales of Rs.330-480/-/Rs.1200-1800/-/Rs.4000-6000/- was extended to him whereas his pension should have been fixed in the corresponding scale of Rs.225-350/- which was Rs.950-1400/-, Rs.3050-4590/- etc. It is reiterated that the pension of the applicant which was revised to Rs.1849/- with effect from 01.01.1996 was not correct and he is eligible for the pension of Rs.1501/- only as per 01.01.1996 as authorised by letter of authority dated 20.05.1999. Accordingly, he is also not entitled to receive pension of Rs.4180/- with effect from 01.01.2006 as authorised vide Annexure A-4 and he was eligible

to receive pension of Rs.3500/- with effect from 01.01.2006 as authorised vide Annexure A2. However, since as per Annexure A-5 order dated 11.02.2013 the Railway Board has adopted the instructions contained in O.M. Dated 28.01.2013 of DOP & PW and since in terms of Para 2 of the said O.M., it was stipulated that the pension of pre-2006 pensioners were further stepped up to 50% of the sum of the minimum of pay in the pay band and the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired he would come under SI No.6 of the Annexure of the Annexure A-5 order, in terms of which he would be eligible for pension of Rs.3890/- with effect from 01.01.2006. Thus, he is no way eligible for the pension of Rs.4920/- as claimed as relief. Similarly, as per Annexure A-12 on implementation of the recommendations of 6th CPC and after multiplying the pension of Rs.3890/- by a factor of 2.57, his eligible pension would be Rs.9998/- with effect from 01.01.2016 and not Rs.12750/- as claimed by him.

12. We have carefully considered the arguments put forth by Shri.T.C.Govindswamy, learned counsel for the applicant and Shri.Sunil Jacob Jose, learned counsel for the respondents. We have examined the documents provided and have also perused the argument notes. The issue, in its essence, boils down to whether it can be accepted that the respondents Railways had committed an inadvertent error as now claimed by them in applying the pay scale of Rs.330-480/- in the case of the applicant and thereby fixing his pension in the corresponding scales of Rs.1200-1800/-, Rs.4000-6000/- and Rs.5200-20,200/- + GP 2400

after 4th CPC, 5th CPC and 6th CPC. The respondents claim is that since he retired from service on 08.08.1978 and since the restructuring orders at Annexure R-2 granting higher pay scale of Rs.330-480/- to the category of Shunting Jamedars with effect from 01.08.1983 are not applicable to him, he should have been given further benefits of pension in the corresponding scales of Rs.950-1400/- (4th CPC), Rs.3050-4590/- (5th CPC) & Rs.5200-20200/- + GP Rs.1900/- (6th CPC) only. The respondents further submit that when the 7th Pay Commission came into effect from 01.01.2016, the eligibility of the applicant for pension with effect from 01.01.2016 was recalculated to Rs.10550/-. A new PPO No. 19787060500032 dated 24.09.2019 issued in favour of the applicant showing the pension amount of Rs.10550/- with effect from 01.01.2016 which has been produced at Annexure R-5.

13. It is seen that while this matter was being considered by this Tribunal, a specific query had been put to the respondents on 06.09.2019 ie., to clarify whether they were granting the corresponding pay scales of Rs.330-480/Rs.1200-1800 etc. to any other employee who retired prior to 01.01.1983, and to the precise corresponding pay scales granted to any person who retired in the post of Shunting Jamedar before this date. In response to the above query, the respondents filed an affidavit in which they stated that they had granted the corresponding 4th CPC pay scale of Rs.950-1400/- to those Shunting Jamedars who were in scale Rs.225-350/- and who had retired prior to 01.01.1983. The Pension Payment Orders (PPO) of two such employees were produced by them at Annexure R6 (i), relating to

Shri.A.Nachimuthu, Shunting Jamedar who retired in scale Rs.225-350/- on 30.04.1982 and late Shri.Kunhappa Nambiar P., Shunting Jamedar who retired in scale Rs.225-350/- on 30.04.1980. (His wife Smt. Rajalakshmi P M is being paid family pension since he has expired). As per the copies of the PPO issued in favour of the above pensioners (produced at Annexure R-6) it is seen that the corresponding pay scales granted to these employees were Rs.950-1400/- (4th CPC), Rs.3050-4590/- (5th CPC) and Rs.5200-20200/- + GP 1900/- (6th CPC). The respondents submits that this clearly proves that there was an erroneous fixation in the case of the applicant, as colleagues of his who retired prior to 01.01.1983 have been given the correct corresponding pay scales.

14. Further, the respondents have referred to two orders of this Tribunal and of the Hon'ble High Court of Kerala to buttress their argument. In the first instance, they have stated that in O.A.No.180/00389/2015 along with O.A.No.180/00850/2015, O.A.No.180/00851/2015 and O.A.No.180/00859/2015 this Tribunal vide its order dated 21.12.2016 has gone into a common issue involved in the four cases viz., as to whether the pension of retired Railway officials have to be fixed based on the scale of pay enjoyed by the individual official at the time of the retirement or the scale of the pay of the post from which they had retired, for determining the 50% of the minimum of the corresponding revised pay band plus the grade pay as per 6th CPC recommendations. In paras 17 and 18, the Tribunal found as follows :

“17. With reference to OAs Nos. 180/850/2015 and 180/851/2015 this Tribunal finds merit in the contention of the respondents that the applicants therein are not entitled to the benefits of the upgradation as they did not come within the 17.26% of the posts which were upgraded. Moreover, the applicants had retired long before the upgradation so happened.

18. Similarly in OA No. 180/859/2015 also the claim of the applicant for the pension is based on the pay of the restructured cadre. He was not eligible for restructured cadre as he was working in the construction units and projects whereas the restructuring was applicable only to the open line establishment. Therefore, in the case of the applicants in OAs Nos.180/850/2015, 180/851/2015 and 180/859/2015 on account of their sheer inherent ineligibility for the higher grade they cannot base their claim for a higher pension of the post which has been upgraded/restructured.”

15. The respondents have also produced a copy of the order dated 25.07.2013 in O.A.No.100/2012 filed by Shri.Sivasankaran.P & others dismissed by this Tribunal. The OP(CAT) No.4708/2013 & 14/2015 filed challenging the above order, was also dismissed by the Hon'ble High Court as per judgement dated 26.09.2018. The O.A.No.100/2012 was related to Electrical Chargeman (B) of the Southern Railway who had been drawing the scale of pay of Rs.1400-2300/- and whose retirements took place on 31.08.1995, 31.03.1992 and 31.05.1993. The pension of these applicants was revised w.e.f. 01.01.1996 by fixing their pay in the revised pay scale of Rs.5000-8000/- in the 5th CPC. The Railways reduced this with retrospective effect alleging mistake in the replacement scale. After examining the matter elaborately this Tribunal in paras 7 and 8 held as follows :

“7. The pension of the applicants was fixed on the basis of the basic pay they were drawing in the pay scale of Rs. 1400-2300/- at the time of retirement. The applicants have no grievance about it. What is relevant for the fixation of pension is their pay scale at the time of retirement and not their post which may be upgraded or downgraded or merged or even abolished subsequently. The post of Electrical Chargeman-B from which the applicants retired was re-designated as Junior Engineer Grade-II with a higher entry level qualification of diploma in engineering and with a higher pay scale of Rs. 5000-8000/- with effect from 1.1.1996. As per Annexures R4, R5 & R6 the benefit of higher pay scale is available to employees who were in service as on 1.1.1996 or after and pensioners who had retired on or after 1.1.1996 after holding the post in the higher replacement scale. Pre- 1.1.1996 pensioners like the applicants were given revised pension based on the normal replacement scale of Rs. 4500-7000/- which is corresponding to the pay scale of Rs. 1400-2300/- at their retirement. The applicants by an inadvertent mistake were given revised pension based not on the correct replacement scale of Rs. 4500-7000/- but on a higher pay scale of Rs. 5000- 8000/- This incorrect fixation of pension is relied upon by the applicants for fixing their pension at Rs. 6750/- in the VIth pay revision taking into account the pay band of Rs. 9300-34800/- with grade pay of Rs. 4200/- as corresponding replacement scale of Rs. 5000-8000/- in which they were drawing pension wrongly. This in fact is asking for the perpetuation of a mistake, which is unreasonable and unjust. In the case of State of Uttar Pradesh Vs. Rajkumar Sharma - 2006 (3) SCC 330 the Apex Court held that if the State committed a mistake it cannot be forced to perpetuate the same mistake. For a decade or so the applicants derived the benefit of higher pension than their legal entitlement. Length of time in the matter of availment of ineligible or unintended benefit will not legitimize it. The claim of the applicants is based not on a vested right but on an egregious error on the part of the respondents. The respondents have every right to correct a mistake on their part.

8. The applicants contended that under Rule 90 of Railway Services (Pension) Rules, 1993 pension once fixed cannot be re-fixed to the disadvantage of the Railway servant unless such revision becomes necessary on account of a clerical error subsequently. The respondents contended that they have corrected only a clerical error. What is provided under Rule 90 refers to pension once sanctioned after final assessment. In the instant case the pension sanctioned to the applicants after final assessment soon after their retirement has not been revised to their disadvantage. The clerical error

that occurred in the revision of pension order dated 22.12.2008 has been corrected vide Annexures A5(a), A6 & A7 dated 30.7.2009, 9.10.2009 and 21.08.2009 respectively and it cannot be said that this correction resulted in a revision to the disadvantage of the applicants in as much as it did not reduce their legal entitlement upon final assessment consequent to retirement. Their pension was fixed in accordance with the normal replacement scale of pay of Rs. 4500-7000/- corresponding to Rs. 1400-2300/- which the applicants held at their retirement. The respondents did not continue with the mistake they committed while fixing the pension on the basis of scale of pay of Rs. 5000-8000/- with effect from 1.1.1996 to which they were not eligible. In doing so there is no legally tenable disadvantage caused to the applicants."

16. The Orders of the Tribunal in the above matter were confirmed by the Hon'ble High Court of Kerala in OP (CAT) No.4708/2013 & 14/2015 where the petitioners were the respondents in the O.A.No.100/2012. They had gone to the Hon'ble High Court in order to strike down the orders relating to non recovery of the excess payment made to the applicants in the O.A due to the old age of the applicants. The Hon'ble High Court after examining the entire matter in detail found as follows :

"10.In such circumstances we do not find any reason to disagree with the findings of the Tribunal that subsequent to the acceptance of the recommendation of the 5th CPC the applicants were entitled only to get their pension revised taking into account the replacement scale of Rs.4500 – 7000. It is considering such aspects that the pension was revised as can be seen from Annexures A5(a), A6 and A7. Merely because this fact was not at all specifically stated in Annexure-A8, it cannot make the applicants automatically entitled to a scale of pay to which they are not legally entitled and also claim that they are entitled to get their pension revised taking into account that scale of pay attached to the post of Junior Engineer Grade-II to which they are not entitled to. In short, we do not find any reason to interfere with the conclusion arrived at by the Tribunal that the applicants are entitled only to get their pension revised taking into account the replacement scale of Rs 4500 – 7000 from

1.1.1996. At the same time, the impugned order would reveal that even after holding as above the Tribunal had declined to grant liberty to the respondents to effect recovery of excess pension from the applicants, from 1.1.1996 to 31.12.2005. In fact, it is the said disinclination that constrained the official respondents to file these Original petitions.

11. When O.P.(CAT).14/2015 taken up for consideration, the learned counsel appearing for the official respondents submitted that in the light of the decision in State of Punjab OP(CAT).4708/13 & 14/15 20 and Others v. Rafiq Masih (White Washer) and Others [(2015) 4 SCC 334], excess pension granted to the applicants could not be recovered.

12. In the result, both the Original Petitions are dismissed.”

17. Mr.T.C.Govindaswamy, learned counsel for applicant however contests the applicability of these orders. In the matter of O.A produced at Annexure R-1 (common order in O.A Nos.180/389/2015, 180/850/2015, 180/851/2015 and 180/859/2015), it is submitted that all the applicants in this order retired in the 4th CPC scale or thereafter, that is to say, after 01.01.1986. Further, the order of the Tribunal in O.A.No.100/2012 dated 25.07.2013 confirmed in OP(CAT) Nos.4708/2013 & 14/2015 vide judgement dated 26.09.2018 is also contested as having no application, since it is evident from the order that the applicants retired from service on 31.08.1995, 31.03.1992 and 31.05.1993 ie., after 01.01.1986. Learned counsel relies on the paragraph 2 of Annexure A-1 Railway Board order in full. He contends that pay of all Government servants who retired prior to 01.01.1986 and who were in receipt of pension as on 01.01.1986 will have to be fixed on notional basis in the revised scale of pay for the post held by the person at the time of retirement or on the date of death of Government employee, introduced subsequent to retirement/death of Government

employee consequent upon promulgating Revised Pay Rules on implementation of the recommendations of successive Pay Commissions or of award of Board of Arbitration or judgment of Court or due to general revision of the scale of pay for the post etc. In all such cases pay fixed on notional basis on the first occasion shall be treated as pay for the purpose of emoluments for re-fixation of pay in the revised scale of pay on the second occasion. In the same manner pay on notional basis shall be fixed on subsequent occasions; while fixing pay on notional basis on each occasion, the pay fixation formulae approved by the Government and other relevant instructions on the subject in force at the relevant time shall be strictly followed. Learned counsel submits that as it is admitted by the respondents in para 11 of their reply statement that "In terms of Annexure R-2 order, the pay scale of Shunting Jamedar was revised to Rs.330-480/-" therefore, going by Annexure A-1 Railway Board Order, the first occasion for revision of applicant's pay would be in terms of Annexure R-2 Railway Board Order, that is, with effect from 01.08.1983, that is in the scale of pay of Rs.330-480/. The second occasion would be fixation of pay in the corresponding pay scale with effect from 01.01.1986 as per formula applicable for implementation of recommendations of 4th CPC. Thus the applicant's pay has to be fixed in the scale of pay of Rs.1200-1800/- and, on this basis, notional pay scale and pay to be arrived at for calculating the applicant's pension ie. notionally fixed as on 01.01.1996, which would be consolidated with effect from 01.01.1996 and paid as pension in terms of Annexure A-1. The pay scale, pay and the pension to be arrived at with effect from 01.01.1996 would be the basis for the revision of pension with effect from

01.01.2006 and again the revision of pension with effect from 01.01.2016.

If that is the case, the applicant should be entitled to the basic pension of Rs.4920/- with effect from 01.01.2006 and Rs.12750/- with effect from 01.01.2016.

18. It is submitted by the counsel for the applicant that the respondents cannot suddenly say that there is no revision of scale of pay as on 01.08.1983 as regards as Shunting Jamedar, contrary to their admission in para 11 of the reply statement and also against R-2 Railway Board Order produced by them. The applicant is over 98 years old and at this distance of time the respondents cannot turn back and say the pension revised and granted to the applicant with effect from 01.01.1996 was erroneous. Various arguments advanced by the respondents do not speak of somebody who retired prior to 01.01.1986 and they speak of only those for whom upgraded scale of pay was granted with effect from 01.01.1996 or with effect from 01.01.2006 and those who retire after 01.01.2006. In the light of all these positions the applicant prays that the contention of the respondents be rejected and the O.A be allowed.

19. As mentioned earlier we have carefully examined all these issues. We note that from the ratio of the earlier orders/judgments of the Hon'ble High Court there is a clear recognition that any apparent inadvertent error committed in fixation of pay of the applicant can be corrected even though it is after an extreme length of time. The circulars produced at Annexure R-2 relating to 1983 clearly shows that in para 2 and 3.1(ii) Group "C" (a) that

the upgraded scales were only meant for those incumbents still in service and working as on 01.08.1983. This was not to be used as a guidance for fixing the corresponding scale for those who retired prior to 01.08.1983. This has been underlined by pointing out the examples of two Shunting Jamedars who retired prior to 01.01.1983, whose corresponding scale of pay were fixed in relation to the pay scale of the Shunting Jamedars prior to 1983. Merely the fact that a scale of pay was upgraded for the incumbents who were working as on 01.08.1983 does not make the retirees prior to that date mechanically and automatically eligible for the same scale while arriving at a decision on the corresponding scale. The applicability of the para 2 of the Annexure A1 Order has to be viewed in the context of whether the revision of pay for the post is clearly admissible for the retirees prior to 01.08.1983. The applicant was not in service when the revision was done. He had retired in the lower pay scale of Rs.225-350/- . He thus was entitled to be considered as in the case of two others cited in paragraph 13 above, in the corresponding pay scales of this scale only. As per the principles laid down by the Tribunal in its orders earlier brought out, what is to be considered relevant for fixation of pension is the pay scale at the time of retirement. As noted in the order in O.A.No.100/2012, the post by itself can be upgraded or downgraded or merged or abolished later. In these orders (brought out at paragraphs 14-16 above) it is clearly established that what is to be considered is the normal replacement scale of the pay scale in which the employee has retired and not any higher scale which may have been granted to those still in service. This principle has not been contested by the applicant who has only made the argument that the applicant of those cases

retired much later and thus these orders have no applicability. However, the principle laid down in these orders pertaining to what should be the normal replacement scale/ corresponding scale of the scale in which the employee had retired and how it should be fixed has not been countered on the grounds of non applicability. The order in O.A.No.100/2012 dated 25.07.2013 was also upheld by Hon'ble High Court of Kerala vide judgment dated 26.09.2018 in O.P.(CAT) No.4708/2013.

20. Thus, in the light of these points the O.A cannot be allowed. The respondents are correct in coming to the conclusion that the revision of pay of the applicant as well as grant of corresponding scale of pay were wrongly done and he is, therefore, not eligible to the reliefs sought. However, we also would go by the law as laid down by Hon'ble Apex Court in the matter of State of Punjab & Ors. v. Rafiq Masih, (2015) 4 SCC 334, and direct that no recovery should be made from the applicant. There is nothing to show in this matter that the applicant was colluding with the authorities or with the pension disbursing agency in the matter of excess pension that has been paid to him. Thus, this Tribunal is of the view that no excess payment should be recovered from the applicant in this case and it is so ordered accordingly.

21. The O.A is dismissed as above. There shall be no order as to costs.

(Dated this the 14th day of July 2021)

K.V.EAPEN
ADMINISTRATIVE MEMBER
asp/yy

P.MADHAVAN
JUDICIAL MEMBER

List of Annexures in O.A.No.180/00357/2018

1. **Annexure A-1** - A true copy of Railway Board Order bearing RBE No.55/98 dated 10.03.1998.
2. **Annexure A-2** - A true copy of PPO NO:860302481 dated 03.07.2012 issued from the office of the 3rd Respondent.
3. **Annexure A-3** - A true copy of application filed for cosideration of the mid-term Pension Adalath-2012, held by the 4th Respondent.
4. **Annexure A-4** - A true copy of letter of Authority bearing No:P500/PGT/4112 dated 03.12.2012, issued from the office of the 3rd Respondent.
5. **Annexure A-5** - A true copy of Railway Board Order bearing RBE No:11/2013 dated 11.02.2013.
6. **Annexure A-6** - A true copy of Railway Board Order bearing RBE No:86/2015 dated 31.07.2015.
7. **Annexure A-7** - A true copy of the representation submitted by the applicant before the mid-term Pension Adalat of 2016, conducted by the 4th Respondent.
8. **Annexure A-8** - A true copy of application dated nil submitted by the applicant before the 4th Respondent.
9. **Annexure A-9** - A true copy of Railway Board Order bearing RBE No:35/2016 dated 13.04.2016.
10. **Annexure A-10** - A true copy of representation submitted by the applicant dated 26.07.2016, addressed to the 4th Respondent.
11. **Annexure A-11** - A true copy of the application submitted by the applicant before the Pension Adalath 2017, conducted by the 4th Respondent.
12. **Annexure A-12** - A true copy of Department of Pension and Pensioners' Welfare O.M. bearing No.38/37/2016-P&PW(A) dated 12.05.2017.
13. **Annexure A-13** - Order bearing No.J/P 626/MTPA/17/07 dated 06.07.2017, issued by the 4th Respondent.
14. **Annexure R-1** - True copy of common order dated 21.12.2016.
15. **Annexure R-2** - True copy of the relevant portion of the Railway Board Order, dated 29.07.1983.

- 16. Annexure R-3** - True copy of the Railway Board letter dated 20.08.2001.
- 17. Annexure R-4** - True copy of the O.M. Dated 06.07.2017 along with the relevant Table No.10.
- 18. Annexure R-5** – True copy of Pension Payment Order dated 24.09.2019 of Accounts Officer, Palakkad.
- 19. Annexure R-6** – True copy of Pension Pay Order.
